

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN MCBREARTY;  
CARL MCBREARTY; and  
NINA MCBREARTY

v.

CIVIL ACTION NO. 02-4553

DELAWARE COUNTY SHERIFFS  
DEPARTMENT; NORWOOD  
BOROUGH POLICE DEPARTMENT;  
DELAWARE COUNTY; and  
MEDIA BOROUGH

**ORDER**

**AND NOW**, this \_\_\_\_ day of \_\_\_\_\_, 2001, upon consideration of the Motion for Sanctions by Defendant, Norwood Borough Police Department, and any response thereto, it is hereby **ORDERED** and **DECREED** that said Motion is **GRANTED**.

**IT IS** further **ORDERED** and **DECREED** that:

- a. the Plaintiffs, Carl McBrearty and Nina McBrearty, are prohibited from producing any documents at the time of trial of this matter;
- b. the Plaintiffs, John McBrearty, Carl McBrearty, and Nina McBrearty, must pay Two Hundred Dollars (\$200.00) each to counsel for Defendant, Norwood Borough Police Department, for the preparation of the Motion to Compel and subsequent Motion for Sanctions; and
- c. the Plaintiffs must provide responses to the Request for Production of Documents propounded by Defendant, Norwood Borough Police Department, within ten (10) days of the date of this Court's Order.

**BY THE COURT**

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**J.**

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**MOTION OF DEFENDANT,  
NORWOOD BOROUGH POLICE DEPARTMENT,  
FOR SANCTIONS AGAINST PLAINTIFFS,  
JOHN MCBREARTY, CARL MCBREARTY AND NINA MCBREARTY**

Defendant, Norwood Borough Police Department, by and through its counsel, Margolis Edelstein, hereby requests this Honorable Court to enter an Order granting sanctions against the Plaintiffs, John McBrearty, Carl McBrearty and Nina McBrearty, and, in support thereof, avers the following:

1. The Defendant, Norwood Borough Police Department, served the Plaintiffs, John McBrearty, Nina McBrearty, and Carl McBrearty, with Requests for Production of Documents on June 23, 2003.

2. Federal Rule of Civil Procedure 34 provides that the party upon whom Requests for Production of Documents is served shall serve a written response within thirty (30) days after service thereof.

3. The Plaintiffs did not respond to the Defendant's Requests for Production of Documents within the thirty (30) day requirement.

4. A Motion to Compel was filed with the Court, which was granted on August 11, 2003. *See* a true and correct copy of the August 11, 2003, Order signed by the Honorable Judge Legrome D. Davis, attached hereto as Exhibit "A."

5. The Defendant has not received any response from John McBrearty, Nina McBrearty or Carl McBrearty to its Requests for Production of Documents directed to Nina McBrearty or Carl McBrearty.

6. Some documents were provided by John McBrearty. *See* document entitled "Letter to Tom Gallagher," dated August 11, 2003, from John McBrearty, attached hereto as Exhibit "B." *See also* document entitled "Discovery Information," dated July 14, 2003, signed only by John McBrearty, attached hereto as Exhibit "C."

7. However, no documents have been provided by Nina McBrearty or Carl McBrearty and no formal response has been compiled by John McBrearty, even though this Court has Ordered them to respond.

8. The Requests for Production of Documents served by Defendant are relevant and necessary.

9. The Defendant will be prejudiced if full and complete responses to the Requests for Production of Documents are not received.

10. Fed. R. Civ. P. 37(d) permits this Court to make such orders that are just for the Plaintiffs' failure to respond to the Defendant's Requests for Production of Documents. Rule 37(d) also permits this Court to enter an Order granting reasonable attorney's fees.

11. On August 15, 2003, counsel for Norwood Borough Police Department forwarded this Court's August 11, 2003 Order, and requested an answer to Norwood's Request for Production of Documents. *See* correspondence to the Plaintiffs, dated August 15, 2003 attached hereto as Exhibit "D."

12. No responses have been received to date.

13. During Nina McBrearty's deposition, she testified that she knows that her father is not her attorney. *See* deposition testimony of Nina McBrearty (July 31, 2003), at p. 49, attached hereto as Exhibit "E."

14. Nina McBrearty also testified that she has documents pertaining to this incident at home, but did not bring them to her deposition. *See* deposition testimony of Nina McBrearty at pp. 56-57 (Exhibit "E").

15. Carl McBrearty also testified that he maintained documents at home, but did not bring him to his deposition. *See* deposition testimony of Carl McBrearty (July 31, 2003), at pp.23-24, attached hereto as Exhibit "F."

16. These documents have not been provided or identified.

**WHEREFORE**, Defendant, Norwood Borough Police Department, respectfully requests this Honorable Court to enter the attached Order:

a. prohibiting Plaintiffs, Carl McBrearty and Nina McBrearty, from producing any documents at the time of trial of this matter;

b. ordering the Plaintiffs, John McBrearty Carl McBrearty, and Nina McBrearty, to pay sanctions of Two Hundred Dollars (\$200.00) each to counsel for Defendant, Norwood Borough Police Department, for the preparation of the Motion to Compel and subsequent Motion for Sanctions ; and

c. ordering the Plaintiffs to provide responses to the Defendant's, Norwood Borough Police Department's, Request for Production of Documents within ten (10) days of the date of this Court's Order.

Respectfully submitted,

MARGOLIS EDELSTEIN

By: \_\_\_\_\_

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Identification No. 87004  
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Norwood Borough Police Department

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Motion of Defendant, Norwood Borough Police Department, for Sanctions Against Plaintiffs, John McBrearty, Carl McBrearty and Nina McBrearty, has been served this \_\_\_\_\_ day of August, 2003, by first-class United States mail, postage pre-paid, addressed as follows:

John McBrearty  
928 Delview Drive  
Folcroft, PA 19032  
Plaintiff, *pro se*

Nina McBrearty  
Nina McBrearty  
316 East 21st Street  
Chester, PA 19013  
Plaintiff, *pro se*

Carl McBrearty  
928 Delview Drive  
Folcroft, PA 19032  
Plaintiff, *pro se*

Thomas C. Gallagher, Esquire  
Holsten & Associates  
One Olive Street  
Media, PA 19063  
Attorney for Defendants,  
Delaware County and  
Delaware County Sheriffs Department

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Carl J. DiCampli